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# IN THE LIGHT OF RECENT DEVELOPMENTS: WHAT SHOULD BE OUR POLICY IN DEAL- ING WITH THE DELINQUENTS— JUVENILE AND ADULT<sup>1</sup>

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It has been repeatedly pointed out that society has passed through three stages in its treatment of the wrong-doer. First was the old idea of revenge, an eye for an eye and a tooth for a tooth, where the underlying thought seems to have been that some sort of justice was satisfied if the wrong-doer was made to suffer in a similar fashion and to the same extent as his victim. Then came the second stage, which still finds some defenders, where the idea was to punish the offender so as to deter others from committing a similar offense.. Finally we have arrived at the third stage in which the prime thought is to so treat the offender as to bring about his reformation. To these three the idealist has sometimes added a fourth, the period when crimes should not simply be treated but should be prevented. We certainly have not made much progress in that direction as yet. Moreover, it is probably true that in fact we are to a considerable extent still in the second stage. Nevertheless the idea of reforming the offenders is well advanced and is uppermost in the minds of most of the people and students of the problem, even though in practice we do not always find it practical. Recent developments in criminology lead inevitably not only to the idea that treatment of the offender for the purpose of reforming him is impracticable but also rather definitely to the logical conclusion that in a large proportion of the cases it is impossible, impossible not from the nature of the crime but from the nature of the criminal, not on account of the strength of the habit that may have been formed, but on account of the weakness of the mentality and consequent inability to correct any habit. We might perhaps escape the dilemma by going back to the second or some other stage of thought with the conclusion that whether or not we can reform criminals they must be punished. If punishment does not result in reformation so much the worse. But unfortunately recent developments have not

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<sup>1</sup>Read at the Annual Meeting of the American Institute of Criminal Law and Criminology at Indianapolis, September 17, 1920.

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only revealed to us the impossibility of reforming delinquents but have demonstrated at the same time their irresponsibility. This latter is a serious problem, for the idea of punishing a person for a crime for which he is not responsible is as repugnant in law as in ethics. Before proceeding to discuss a possible policy consistent with the facts, it may be well to review the situation as it is and discover how serious is the predicament which we have suggested. We have coming to us as a result of the war some of the most valuable data that have ever been supplied to students of social problems.

As a result of the examination of 1,700,000 men in the American army, it was found that 10% had the intelligence of a 10-year-old boy or less. These men were found by actual experience in camp to be so stupid as not to be worth sending to France. Another 15% had only the intelligence of 11-year-old children, 20% more the intelligence of 12-year-old children, 25% the intelligence of 13 and 14-year-olds, 16½% the intelligence of 15-year-old children, 9% the intelligence of a person 16 to 17 years of age, and 4½% the highest intelligence, that of 18 and 19-year-olds.<sup>3</sup> These figures are of profound importance from many standpoints, but we are concerned just here mainly with the lower groups, from which we have every reason to expect that a considerable proportion of our wrong-doers will come for the simple reason that these children have not sufficient intelligence either to understand the laws or adapt themselves to them; consequently it is inevitable that when one of these persons with low intelligence has also an excitable temperament and an environment that is not conducive to right living, he is practically certain to become an offender against the law. From the practical side it is of course now accepted that a large percentage of criminals are of weak mind. A striking parallel to these figures has recently been published by the Bureau of Education at Washington, corresponding to the groups above mentioned. This publication shows that 13% of school children leave school in or before the 4th grade at the age of about 10 years, another 13% leave in the 5th grade at the age of 11, 14% more leave in the 6th grade at the age of 12, and 20% leave in the 7th and 8th grades at the ages of 13 or 14, and parallel to this again it is shown that at the time the study was made 9% of wage earners were earning from \$150 to \$200, 12% were earning from \$250 to \$300, 16% were earning from \$350 to \$400, 31% were earning from \$450 to \$600 a year. The corre-

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<sup>3</sup>See "Army Mental Tests," by Yoakum and Yerkes, pp. 22, 133, Holt & Co., and "Human Efficiency and Levels of Intelligence, pp. 24-33, by Henry H. Goddard, Princeton University Press.

lation between the corresponding groups in these three lists is so great as to render it practically certain and a logical conclusion that it is the mentality of the group that is determining the time for leaving school and the wages that could be earned;<sup>4</sup> all of which has much to do with our problem of criminality and makes it clear that the material out of which law-breakers can be made is exceedingly abundant. With this evidence we have a right to expect a very large proportion of law-breakers of both juvenile and adults will be of low mentality. We may proceed to consider the particular problem before us.

As we have already stated, it is clear that these people of low mentality are not fully responsible for the crimes they commit, and it seems equally apparent that the chances of reforming them are also small. The fool cannot learn wisdom. At this point, however, we have made another discovery which is of considerable significance to the problem. Not all of these people of even the lowest intelligence are fools, and on the other hand, some of these groups of the highest intelligence are criminals. We have for long been puzzled by a class of criminals that commit the most absurd and often atrocious crimes and yet who cannot by any possibility be classed as feeble-minded or mentally defective. Indeed many times they prove to be above average intelligence rather than below, and sometimes these cases are defended on the ground of insanity and not infrequently the spectacle is presented of our ablest alienists disagreeing on that question. In other cases the agreement of the specialists as to sanity is complete, but everyone familiar with the criminal is willing to testify that he is noted for his peculiarities, and that he has always done strange things, sometimes within the law and sometimes counter to it.

It is known that we have to consider a large group, how large we do not yet know, of people who are in the incipient stages of insanity, not yet sufficiently marked to come within the usual definition of that term and not admitted by the experts, but nevertheless showing by finer tests distinctly abnormal functioning of the mind and, what is more striking perhaps, consistently bad behavior. The psychopathic personality is a recent arrival in sociological circles, but he is destined to fill a large place and is most assuredly a factor to be reckoned with. He is many times of as low mentality as the individuals denominated feeble-minded but he differs from them in that he has reached his mental level as the result of disease. On the other hand, he may have average mentality or he may even be supernormal in that respect. The possibility of these three grades of mentality—subnormal, normal and

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<sup>4</sup>Human efficiency, p. 114.

supernormal—complicates the question of responsibility. From the standpoint of the diseased mind one might say, unqualifiedly, that whatever his intelligence he is irresponsible because his mind is not functioning normally. On the other hand, it may quite well be that such an individual is as responsible as anyone along certain lines and that it is only when one gets into the special department where his brain fails to function properly that he is not responsible. However, since most of his crimes are misdemeanors related to that special phase of his disability, it is probable that he is not usually responsible for the thing that has brought him before the law. As to his reformability we have again a serious problem. As we have stated the feeble-minded are never cured but the insane are cured every day, or at least they recover and live a reasonably normal, satisfactory life thereafter. Of these cases of psychopathic personality but little is known as yet. There are some indications that some of them recover or outgrow their disabilities, becoming useful and valuable citizens, and others remain in their mild state of psychopathy and all their lives are peculiar, even troublesome, possibly even law-breakers, but never get to the point where they are recognized as distinctly insane. There remains the third group that rapidly deteriorates into some form of recognized insanity. Whether medical or hygienic science can do anything to save these second and third groups is as yet unknown. The condition has not been recognized long enough for the results of treatment to be known. Usually these people have been thought to be simply bad people and have been repeatedly punished, remaining continual law-breakers in their community.

We are now face to face with our problem. Let us assume for the sake of simplicity that they are all—as some of them certainly are—both irresponsible and unreformable. What shall be our policy? We have become accustomed to the thought that the feeble-minded should be segregated, but what about the psychopathic individuals, who in all probability constitute as large a group as the feeble-minded with this difference, as indicated, that they are frequently of normal mental level or even superior? Shall we plan to segregate them for life as we do, or advocate doing, in the case of the feeble-minded? It is a proposition that has many difficulties, of which the providing the necessary institution is not the greatest. But on the other hand, the policy of sentencing them for a time to an institution and then letting them out, unless we know that their mental condition has been cured, is so dangerous as to amount to folly, since it is a certainty that as long as the diseased condition lasts the same conduct that brought them once into the

clutches of the law will persist with the almost certain result that because of increased strain as he reaches man's stature and strength the crimes will become more serious.

Gerald Cadwallader, a 14-year-old boy, was committed to the Bureau of Juvenile Research for stealing and truancy and was found upon examination to be one of the psychopathic group. There being no suitable place in the State of Ohio for such a child he was assigned to the industrial school with the expectation that he would stay there for a year, at the end of which time he could be re-examined and if necessary recommitted, but with the hope, of course, that possibly the regular life and discipline of the institution might work a change for the better in him. He was of superior intelligence and well-oriented enough to know that if he behaved himself at the industrial school he would be released the sooner. As a matter of fact he so managed that he was released in a few months. He went home and in a short time had committed more misdemeanors so that he was again sent to us by the court. We kept him for a short time for study and were about ready to send him again to the industrial school as the only possible disposition of the case, when he anticipated our action by breaking out of his room and breaking into the laboratory and administration building, stealing \$160 in cash, a typewriter and a stop watch and departing for his home town. He entered his home in the night time, took a boy scout suit and a gun and was next heard of in New Orleans. He wrote a letter home saying that he was going to New York but instead he went West and was later heard of in Texas. Since then no trace of him has ever been found. He is markedly psychopathic and yet it is probable that no two physicians could be found who would declare him insane and a subject for the hospital for the insane. If he should turn up in your court after having committed a serious offense, what would you do with him?

When it comes to capital offenses, there is of course another possible procedure. Jean Gianini, a 17-year-old boy, murdered his school teacher. When arrested he confessed and was proud of his achievement. Someone suspected that he was feeble-minded and the writer was called in to examine him. We found that he had a mentality of 11 years; and imbecility was the defense. His lawyer tried hard to save him from the electric chair, but distinctly stated that he did not wish him set free. The question has many times arisen since, was it worth while to go to the trouble and expense of a ten-day trial in order to save that worthless young man from the electric chair? From the standpoint that human life, any human life, is the most

valuable thing in the world, the fight was doubtless worth making, but is there a possibility that we have put too high a value upon human life, at least upon some human lives? As long as society upholds capital punishment at all, is it not possible that it is just as well to let a person of that character be disposed of in the usual way, as to make a great fight in order to keep him alive so that he can spend that life in a state hospital for the criminal insane, where Gianini now is and where he will probably always remain? Recently a man in Lima, Ohio, shot and killed his wife and then turned the revolver on himself but failed to do more than produce a scalp wound. Mental examination showed him to have a mentality of 11 years, but in my judgment above the border line of responsibility. The fact that he attempted to shoot himself seemed to indicate that he was aware of "the nature and quality of his act and that it was wrong." The jury brought in a verdict of guilty, with a recommendation for clemency, and the man is now in the penitentiary for life. His lawyer has moved for a new trial and is fighting the case hard. If his lawyer wins he will go to the state hospital for the criminal insane. What is the difference? So far as the man is concerned, he will be as comfortable and happy in one place as the other. He has not mentality enough to appreciate any difference in the treatment that he may receive.

In Athens County, Ohio, recently a young man 17 years old killed his father and mother. Examination showed that he was both feeble-minded and psychopathic. The rather low grade mind that he naturally had, itself became diseased. In this case the prosecuting attorney asked the grand jury to decide whether the man was probably responsible and if not to commit him directly to the hospital for the criminal insane and save the cost and trouble of a trial. At the hearing before the grand jury the writer was asked whether he thought the man should go to the penitentiary for life or to the hospital for the criminal insane. I answered frankly, "I do not know. If you send him to the hospital for the insane, he goes because of his irresponsibility. If you send him to the penitentiary he goes as a responsible murderer. There may be more reasons why he should go to one place rather than to the other, but I am not able to think of them." In all these cases there comes up also the question of family and relatives. How much should they be considered? In reality it makes more difference to them than it does to the victim himself. So far as he is concerned it is quite possible that the electric chair would be the kindest treatment that could be given, and undoubtedly if we still cling to the second point of view, of deterring others from crime, the capital punishment has the greatest

value possible. Frontier methods were pretty harsh in comparison to the methods of older settled communities, but we have to admit that those methods did put an end to horse stealing. Is it possible in view of all the facts that the wisest policy is to have a thorough examination into the question of responsibility, to segregate and control the feeble-minded and psychopathic offenders, but upon those who are not *clearly* irresponsible, to visit the severest penalty?